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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,933	07/06/2000	Frederick Herbert Raab	GMRR PA00-3	5138
7590 09/14/2004				
JAMES MARC LEAS 37 BUTLER DRIVE S. BURLINGTON, VT 05403		EXAMINER SHINGLETON, MICHAEL B		
		ART UNIT 2817		PAPER NUMBER

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/610,933	Applicant(s) RAAB, FREDERICK HERBERT	
	Examiner Michael B. Shingleton	Art Unit 2817	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____
10. ☐ Other: _____


MICHAEL B. SHINGLETON
PRIMARY EXAMINER
ART UNIT 2817

Continuation of 5. does NOT place the application in condition for allowance because: Clearly the control line of Dent is capable of supplying more than two values to the electronically tunable reactive component which is all that is required by the claims; the claims are not limited to a control means that supplies more than two values to the control line. Since the examiner has a reason to believe that the control line of Dent being of conductive material has the ability to perform the function, i.e. transmit more than two values to the electronically tunable reactive component, the burden has shifted to applicant to prove otherwise. The examiner sees no evidence provided by applicant that the conductive control line of Dent would not be capable of transmitting more than two values. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone (See MPEP 2114). This is paramount to the instant application and thus applicant is requested to point out what is the structural difference between the control line of the claimed invention and the control line of Dent? Again applicant has not pointed this out, for example applicant has not provided evidence that the conductive material of the control line of Dent is such that it makes it incapable of supplying more than two values. The control line of Dent is every much for electronically varying reactance of said reactive component over more than two values as is applicant's control line. How applicant intends to use an element only requires that the prior art element have the ability to so perform and again it is very important to note that the claims do not recite a means that supplies more than two values to the control line. The control line is just that a line and nothing but a line and the examiner does not see any structural difference between the claimed line and the line of the prior art.

Michael B. Shingleton
MICHAEL B SHINGLETON
PRIMARY EXAMINER
GROUP ART UNIT 2317